

2005 WL 3452024 (Miss.Cir.) (Trial Pleading)
Circuit Court of Mississippi, Sunflower County.

Archie ASHFORD, by and through Mary James, Next Friend, for the use and benefit of Archie Ashford, Plaintiff,
v.

MARINER HEALTH CARE, INC. f/k/a Mariner Pose-Acute Network, Inc; Mariner Health Central, Inc.; National Heritage Realty, Inc.; Mariner Health Care Management Company f/k/a LC Management Company; MHC Mid America holding Co.; MHC holding Co; Mid-South Associates, LLC; Boyd P. Gentry; Angela Whittington; Robin C. Skelton; Christian C. Winkle; Michael E. Boxer; Stefano M. Miele; Henry M. Grunstein; Rubin Schron; SMV Indianola, LLC; National Senior Care, Inc.; Sava Senior Care, Inc.; Smv Peoperty Holdings, LLC; SMV Acquisition Corp.; Sava Senior Care, LLC; sava Senior Care Administrative Services, LLC, Inc.; Sava Senior Care Management, LLC; Master Holdings, Inc.; Sub-Master Holdings, Inc.; Ncare Acquisition Corp; National Senior Care, Inc.; Unidentified Entities 1 through 20 and John Does 1 through 20 (as to Indianola Health & Rehabilitation Center), Defendants.

No. 2005-0586-CI.
September 12, 2005.

Complaint

Plaintiff, Archie Ashford, by and through his sister Mary James, Next Friend, for the use and benefit of Archie Ashford, and for his causes of action against Defendants, states:

JURISDICTIONAL STATEMENT

1. Archie Ashford has been a resident of Indianola Health & Rehabilitation Center, a skilled nursing facility located at 401 Highway 82 West, Indianola, Sunflower County, Mississippi from April 11, 2003 until the present, and he has suffered personal injuries and damages while a resident there.
2. Defendant Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, Inc. (Mariner Health Care) is a Delaware corporation with its principal place of business at One Ravinia Drive, Ste. 1500, Atlanta, GA 39346. The agent for service for Mariner Health Care is CT Corporation System, 645 Lakeland East Drive, Ste. 101, Flowood, MS 39232. At all times material to this lawsuit, Defendant Mariner Health Care has done business in Mississippi and continues to do business in Mississippi. Mariner Health Care was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Indianola Health & Rehabilitation Center. Defendant Mariner Health Care's contacts with the state of Mississippi were and are continuous and substantial enough that Mariner Health Care could reasonably expect to be haled into a Mississippi court.
3. Defendant Mariner Health Care Management Company f/k/a LC Management Company (Mariner Health Care Management) is a Delaware company with its principal place of business at One Ravinia Drive, Ste. 1500, Atlanta, GA 39346. The agent for service for Mariner Health Care Management is CT Corporation System, 645 Lakeland East Drive, Ste. 101, Flowood, MS 39232. At all times material to this lawsuit, Defendant Mariner Health Care Management has done business in Mississippi and continues to do business in Mississippi. Mariner I ealth Care Management was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Indianola Health & Rehabilitation Center. Defendant Mariner Health Care Management's contacts with the

stale of Mississippi were and are continuous and substantial enough that Mariner Health Care Management could reasonably expect to be haled into a Mississippi court.

4. Defendant Mariner Health Central, Inc. (Mariner Health Central) is a Delaware corporation with its principal place of business at One Ravinia Drive, Ste. 1500, Atlanta, GA 39346. The agent for service for Mariner Health Central is CT Corporation System, 645 Lakeland East Drive, Ste. 101, Flowood, MS 39232. At all times material to this lawsuit, Defendant Mariner Health Central has done business in Mississippi and continues to do business in Mississippi. Mariner Health Central was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Indianola Health & Rehabilitation Center. Defendant Mariner Health Central's contacts with the state of Mississippi are and were continuous and substantial enough that Mariner Health Central could reasonably expect to be haled into a Mississippi court.

5. Defendant Mid-South Associates, LLC f/k/a Mid South Health Care Associates, LLC is a Delaware company with its principal place of business at One Ravinia Drive, Ste. 1500, Atlanta, GA 39346. The agent for service for Mid-South Associates is The Corporation Trust Company located at 1209 Orange Street, Wilmington, Delaware 19801. At all times material to this lawsuit, Defendant Mid-South Associates has done business in Mississippi and continues to do business in Mississippi. Mid South Associates was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Indianola Health & Rehabilitation Center. Defendant Mid-South Associates contacts with the state of Mississippi were and are continuous and substantial enough that Mid South Associates could reasonably expect to be haled into a Mississippi court.

6. Defendant MHC Holding Co. (MHC Holding) is a Delaware company with its principal place of business at One Ravinia Drive, Ste. 1500, Atlanta, GA 39346. The agent for service for MHC Holding is The Corporation Trust Company located at 1209 Orange Street, Wilmington, Delaware 19801. At all times material to this lawsuit, Defendant MHC Holding has done business in Mississippi and continues to do business in Mississippi. MHC Holding was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Indianola Health & Rehabilitation Center. Defendant MHC Holding's contacts with the state of Mississippi are and were continuous and substantial enough that MHC Holding Co. could reasonably expect to be haled into a Mississippi court.

7. Defendant MHC Mid America Holding, Co. (MHC Mid America) is a Delaware company with its principal place of business at One Ravinia Drive, Ste. 1500, Atlanta, GA 39346. The agent for service for The Corporation Trust Company located at 1209 Orange Street, Wilmington, Delaware 19801. At all times material to this lawsuit, Defendant MHC Mid America has done business in Mississippi and continues to do business in Mississippi. MHC Mid America was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Indianola Health & Rehabilitation Center. Defendant MHC Mid America's contacts with the state of Mississippi were and are continuous and substantial enough that MHC Mid America could reasonably expect to be haled into a Mississippi court.

8. Defendant National Heritage Realty, Inc. (National Heritage) is a Louisiana corporation with its principal place of business at One Ravinia Drive, Ste. 1500, Atlanta, GA 39346. The agent for service for National Heritage is CT Corporation System, 645 Lakeland East Drive, Ste. 101, Flowood, MS 39232. At all times material to this lawsuit, Defendant National Heritage has done business in Mississippi and continues to do business in Mississippi. National Heritage was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Indianola Health & Rehabilitation Center. Defendant National Heritage's contacts with the state of Mississippi were and are continuous and substantial enough that National Heritage could reasonably expect to be haled into a Mississippi court. All Defendants referenced in Paragraphs 2 through 7 are hereby collectively referred to as "Mariner Defendants".

9. Defendant Boyd P. Gentry (Gentry), on information and belief, was the licensee of Indianola Health & Rehabilitation Center on or about the dates relevant to this lawsuit. Defendant Gentry is a resident citizen of the State of Georgia. Defendant Gentry for all times material to this lawsuit conducted business in Mississippi. Further, Defendant Gentry has engaged in a conspiracy with the other Defendants to try to make the Mariner Defendants judgment proof by helping to strip the real estate and other valuable property assets from the Mariner Defendants and through the artifices of a merger as set forth in detail below, Defendant Gentry has conspired to hide said assets and to personally profit from the theft and succession in interest of the Defendants referenced in paragraphs 11 through 26 herein and their related companies to the Mariner Defendants' assets and liabilities. Defendant Gentry's contacts with the state of Mississippi are and were continuous and substantial enough that Gentry could reasonably expect to be haled into a Mississippi court. Boyd Gentry resides at 48 Northwood Avenue NB, Atlanta, GA.

10. Defendant Angela Whittington, on information and belief, was the administrator for Indianola Health & Rehabilitation Center on or about certain dates relevant to this lawsuit and is a resident citizen of the State of Mississippi and resides at 1248 East Wanda Drive, Greenville, Mississippi.

11. Defendant Robin C. Skelton, on information and belief, was the administrator for Indianola Health & Rehabilitation Center on or about certain dates relevant to this lawsuit and is a resident citizen of the State of Mississippi and resides at 66 County Road 502, Corinth, Mississippi.

12. Defendant Sava Senior Care, LLC is a successor in interest to and a co conspirator with the original named Defendants. Sava Senior Care, LLC is a Delaware corporation with its principal place of business in Atlanta, Georgia. For all periods of time relevant to this Complaint, Sava Senior Care, L.L.C. managed, directed and controlled various subsidiary companies through which it conducted business in the nursing home and healthcare industries. Defendant, Sava Senior Care, L.L.C, for all material times in question, owned, operated, controlled, and/or managed Indianola Health & Rehabilitation Center. Furthermore, for all times material to this case, Sava Senior Care, L.L.C, Inc. conducted business in the state of Mississippi, and has systematic and continuing contacts with the state of Mississippi, and committed torts in said state. Further, Defendant, Sava Senior Care, L.L.C, has engaged in a conspiracy with the other Defendants to try to make the Mariner Defendants judgment proof by helping to strip the real estate and other valuable property assets from the Mariner Defendants and, through the artifices of a merger as set forth in detail below, Defendant Sava Senior Care, L.L.C. has conspired to hide said assets and to personally profit from the theft and succession in interest of the Defendants referenced in Paragraphs 11 through 26 herein and their related companies to the Mariner Defendants' assets and liabilities. Defendant, Sava Senior Care, LLC's, contacts with the state of Mississippi, were and are continuous and significant enough so that Sava Senior Care, L.L.C. could reasonably expect to be held into a Mississippi court. Sava Senior Care, LLC's agent for service of process is The Corporation Trust Company located at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

13. Sava Senior Care, Inc., is a successor in interest to and a co conspirator with the original named Defendants. Sava Senior Care, Inc. is a Delaware corporation with its principal place of business in Atlanta, Georgia. For all periods of time relevant to this Complaint, Sava Senior Care, Inc. managed, directed and controlled various subsidiary companies through which it conducted business in the nursing home and healthcare industries. Defendant, Sava Senior Care, Inc., for all material times in question, owned, operated, controlled, and/or managed Indianola Health & Rehabilitation Center. Furthermore, for all times material to this case, Sava Senior Care, Inc. conducted business in the state of Mississippi, and has systematic and continuing contacts with the state of Mississippi, and committed torts in said state. Further, Defendant, Sava Senior Care, Inc., has engaged in a conspiracy with the other Defendants to try to make the Mariner Defendants judgment proof by helping to strip the real estate and other valuable property assets from the Mariner Defendants and through the artifices of a merger as set forth in detail below, Defendant Sava Senior Care, Inc. has conspired to hide said assets and to personally profit from the theft and succession in interest of the Defendants listed in paragraphs 11 through 26 herein and their related companies to the Mariner Defendants' assets and liabilities. Defendant, Sava Senior Care, Inc.'s contacts with the state of Mississippi, were and are continuous and significant enough so that Sava Senior Care, Inc. could reasonably expect to be held into a Mississippi court. SMV Senior Care, Inc.'s agent for service of process is The Corporation Trust Company located at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

14. Sava Senior Care Administrative Services, LLC is a successor in interest to and a co conspirator with the original named Defendants. Sava Senior Care Administrative Services, LLC is a Delaware corporation with its principal place of business in Atlanta, Georgia. For all periods of time relevant to this Complaint, Sava Senior Care Administrative Services, LLC. managed, directed and controlled various nursing home facilities with which it had management services agreements. Defendant, Sava Senior Care Administrative Services, LLC, for all material times in question, owned, operated, controlled, and/or managed the Indianola Health & Rehabilitation Center. Furthermore, for all times material to this case, Sava Senior Care Administrative Services, LLC, conducted business in the state of Mississippi, and has systematic and continuing contacts with the state of Mississippi, and committed torts in said state. Further, Defendant, Sava Senior Care Administrative Services, LLC, has engaged in a conspiracy with the other Defendants to try to make the Mariner Defendants judgment proof by helping to strip the real estate and other valuable property assets from the Mariner Defendants and through the artifices of a merger as set forth in detail below, Defendant Sava Senior Care, Administrative Services, LLC has conspired to hide said assets and to personally profit from the theft and succession in interest of the Defendants listed in paragraphs 11 through 26 herein and their related companies to the Mariner Defendants' assets and liabilities. Defendant, Sava Senior Care Administrative Services, L.L.C.'s, contacts with the state of Mississippi were and are continuous and significant enough so that Sava Senior Care Administrative Services, L.L.C., could reasonably expect to be haled into a Mississippi court. Sava Senior Care Administrative Services, L.L.C.'s agent for service of process is The Corporation Trust Company located at 1209 Orange Street, Wilmington, DE 19801.

15. Sava Senior Care Management, LLC is a successor in interest to and a co conspirator with the original named Defendants. Sava Senior Care Management, LLC is a Delaware corporation with its principal place of business in Atlanta, Georgia. For all periods of time relevant to this Complaint, Sava Senior Care Management, LLC. managed, directed and controlled various nursing home facilities with which it had management services agreements. Defendant, Sava Senior Care Management, LLC, for all material times in question, owned, operated, controlled, and/or managed the Indianola Health & Rehabilitation Center. Furthermore, for all times material to this case, Sava Senior Care Management, LLC, conducted business in the state of Mississippi, and has systematic and continuing contacts with the state of Mississippi, and committed torts in said state. Further, Defendant, Sava Senior Care Management, LLC, has engaged in a conspiracy with the other Defendants to try to make the Mariner Defendants judgment proof by helping to strip the real estate and other valuable property assets from the Mariner Defendants and through the artifices of a merger as set forth in detail below, Defendant Sava Senior Care, Management, LLC has conspired to hide said assets and to personally profit from the theft and succession in interest of the Defendants listed in paragraphs 11 through 26 herein and their related companies to the Mariner Defendants' assets and liabilities. Defendant, Sava Senior Care Management, L.L.C.'s, contacts with the state of Mississippi were and are continuous and significant enough so that Sava Senior Care Management, L.L.C., could reasonably expect to be haled into a Mississippi court. Sava Senior Care Management, L.L.C.'s agent for service of process is The Corporation Trust Company located at 1209 Orange Street, Wilmington, DE 19801.

16. Defendant SMV Property Holdings, LLC is a successor in interest to and a co conspirator with the original named Defendants. SMV Property Holdings, LLC is a Delaware corporation with its principal place of business in Atlanta, Georgia. For all periods of time relevant to this Complaint, SMV Property Holdings, LLC was the holding company and managed, directed and controlled various subsidiary companies through which it conducted business in the nursing home and healthcare industries. Defendant, SMV Property Holdings, LLC for all material times in question, owned, operated, controlled, and/or managed Indianola Health & Rehabilitation Center. Furthermore, for all times material to this case, SMV Property Holdings, LLC conducted business in the state of Mississippi, and has systematic and continuing contacts with the state of Mississippi, and committed torts in said state. Further, Defendant, SMV Property Holdings, LLC has engaged in a conspiracy with the other Defendants to try to make the Mariner Defendants judgment proof by helping to strip the real estate and other valuable property assets from the Mariner Defendants and through the artifices of a merger as set forth in detail below, Defendant SMV Property Holdings, LLC has conspired to hide said assets and to personally profit from the theft and succession in interest of the Defendants listed in paragraphs 11 through 26 herein and their related companies to the Mariner Defendants' assets and liabilities. Defendant, SMV Property Holdings, LLC's contacts with the state of Mississippi were and are continuous and significant enough so that SMV Holdings, LLC could reasonably expect to be haled into a Mississippi court. SMV Property

Holdings, LLC's agent for service of process is The Corporation Trust Company located at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

17. Defendant SMV Acquisition Corp. is a successor in interest to and a co conspirator with the original named Defendants. SMV Acquisition Corp. is a Delaware corporation with its principal place of business in Atlanta, Georgia. For all periods of time relevant to this Complaint, SMV Acquisition Corp. was the holding company and managed, directed and controlled various subsidiary companies through which it conducted business in the nursing home and healthcare industries. Defendant, SMV Acquisition Corp. for all material times in question, owned, operated, controlled, and/or managed Indianola Health & Rehabilitation Center. Furthermore, for all times material to this case, SMV Acquisition Corp. conducted business in the state of Mississippi, and has systematic and continuing contacts with the state of Mississippi, and committed torts in said state. Further, Defendant, SMV Acquisition Corp., has engaged in a conspiracy with the other Defendants to try to make the Mariner Defendants judgment proof by helping to strip the real estate and other valuable property assets from the Mariner Defendants and through the artifices of a merger as set forth in detail below, Defendant, SMV Acquisition Corp., has conspired to hide said assets and to personally profit from the theft and succession in interest of the Defendants listed in paragraphs 11 through 26 herein and their related companies to the Mariner Defendants' assets and liabilities. Defendant, SMV Acquisition Corp.'s contacts with the state of Mississippi were and are continuous and significant enough so that SMV Acquisition Corp. could reasonably expect to be haled into a Mississippi court. SMV Acquisition Corp.'s agent for service of process is The Corporation Trust Company located at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

18. Master Holdings, Inc. is a successor in interest to and a co conspirator with the original named Defendants. Master Holdings, Inc. is a Delaware corporation with its principal place of business in Atlanta, Georgia. For all periods of time relevant to this Complaint, Master Holdings, Inc. directed and controlled subsidiary companies through which it conducted business in the nursing home and healthcare industries. Defendant, Master Holdings, Inc., for all material times in question, owned, operated, controlled, and/or managed Indianola Health & Rehabilitation Center. Furthermore, for all times material to this case, Master Holdings, Inc., conducted business in the state of Mississippi, and has systematic and continuing contacts with the state of Mississippi, and committed torts in said state. Further, Defendant, Master Holdings, Inc., has engaged in a conspiracy with the other Defendants to try to make the Mariner Defendants judgment proof by helping to strip the real estate and other valuable property assets from the Mariner Defendants and through the artifices of a merger as set forth in detail below, Defendant Master Holdings, Inc. has conspired to hide said assets and to personally profit from the theft and succession in interest of the Defendants listed in paragraphs 11 through 26 here and their related companies to the Mariner Defendants' assets and liabilities. Defendant, Master Holdings, Inc.'s, contacts with the state of Mississippi were continuous and were significant enough so that Master Holdings, Inc., could reasonably expect to be held into a Mississippi court. Master Holdings, Inc.'s agent for service of process is The Corporation Trust Company located at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

19. Defendant SMV Indianola, LLC is a successor in interest to and a co conspirator with the original named Defendants. SMV Indianola, LLC is a Delaware corporation with its principal place of business in Indianola, Mississippi. For all periods of time relevant to this Complaint, SMV Indianola LLC conducted business in the nursing home and healthcare industries. Defendant, SMV Indianola LLC, for material times in question, owned, operated, controlled, and/or managed Indianola Health & Rehabilitation Center. Furthermore, for all times material to this case, SMV Indianola LLC conducted business in the state of Mississippi, and has systematic and continuing contacts with the state of Mississippi, and committed torts in said state. Further, Defendant, SMV Indianola LLC, has engaged in a conspiracy with the other Defendants to try to make the Mariner defendants judgment proof by helping to strip the real estate and other valuable property assets from the Mariner Defendants and through the artifices of a merger as set forth in detail below, Defendant SMV Indianola LLC has conspired to hide said assets and to personally profit from the theft and succession in interest of the Defendants listed in paragraphs 11 through 26 herein and their related companies to the Mariner Defendants' assets and liabilities. Defendant, SMV Indianola LLC's, contacts with the state of Mississippi, were and are continuous and significant enough so that SVM Indianola LLC, could reasonably expect to be held into a Mississippi court. SMV Indianola LLC's agent for service of process is CT Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232.

20. NCARE Acquisition Corp. is a successor in interest to and a co conspirator with the original named Defendants. NCARE Acquisition Corp. is a Delaware corporation with its principal place of business in Atlanta, Georgia. For periods of time relevant to this Complaint, NCARE Acquisition Corp. was the company involved in a merger of Mariner into National Senior Care and facilitated the merger and acquisition of Mariner. Furthermore, for all times material to this case, NCARE Acquisition Corp. conducted business in the state of Mississippi, and has systematic and continuing contacts with the state of Mississippi, and committed torts in said state. Further, Defendant, NCARE Acquisition Corp., has engaged in a conspiracy with the other Defendants to try to the Mariner Defendants judgment proof by helping to strip the real estate and other valuable property assets from the Mariner Defendants and through the artifices of a merger as set forth in detail below, Defendant NCARE Acquisition Corp. has conspired to hide said assets and to personally profit from the theft and succession in interest of the Defendants listed in paragraphs 11 through 26 herein and their related companies to the Mariner Defendants' assets and liabilities. Defendant, NCARE Acquisition Corp.'s, contacts with the state of Mississippi, were continuous and were significant enough so that NCARE Acquisition Corp. could reasonably expect to be haled into a Mississippi court. NCARE Acquisition Corp.'s agent for service of process is The Corporation Trust Company located at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

21. Defendant National Senior Care, Inc. is a successor in interest to and a co conspirator with the original named Defendants. National Senior Care, Inc. is a Delaware corporation with its principal place of business in Atlanta, Georgia. For all periods of time relevant to this Complaint, National Senior Care, Inc. was the holding company and directed and controlled various subsidiary companies through which it conducted business in the nursing home and healthcare industries. Defendant, National Senior Care, Inc., for material times in question, owned, operated, controlled, and/or managed the Indianola Health & Rehabilitation Center. Furthermore, for all times material to this case, National Senior Care, Inc. conducted business in the state of Mississippi, and has systematic and continuing contacts with the state of Mississippi, and committed torts in said state. Further, Defendant, National Senior Care, Inc., has engaged in a conspiracy with the other Defendants to try to make the Mariner Defendants judgment proof by helping to strip the real estate and other valuable property assets from the Mariner Defendants and through the artifices of a merger as set forth in detail below, Defendant National Senior Care, Inc. has conspired to hide said assets and to personally profit from the theft and succession in interest of the Defendants listed in paragraphs 11 through 26 herein and their related companies to the Mariner Defendants' assets and liabilities Defendant, National Senior Care, Inc.'s, contacts with the state of Mississippi, were and are continuous and significant enough so that National Senior Care, Inc. could reasonably expect to be haled into a Mississippi court. National Senior Care, Inc.'s agent for service of process is The Corporation Trust Company located at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

22. Defendant Stefano M. Miele is a successor in interest to and a co conspirator with the original named Defendants. Stefano M. Miele is a citizen of the state of Georgia, who had numerous business dealings and contacts in the state of Mississippi. In addition, Mr. Miele conducted business in the state of Mississippi and committed torts in the state of Mississippi. Further, Defendant, Miele, has engaged in a conspiracy with the other Defendants to try to make the Mariner Defendants judgment proof by helping to strip the real estate and other valuable property assets from the Mariner Defendants and through the artifices of a merger as set forth in detail below, Defendant Miele has conspired to hide said assets and to personally profit from the theft and succession in interest of the Defendants listed in paragraphs 11 through 26 and their related companies to the Mariner Defendants' assets and liabilities. Defendant Miele's contacts with the state of Mississippi were and are substantial and continuous such that Mr. Miele could reasonably expect to be haled into a Mississippi court. Mr. Miele's address is 3654 Laurel Chase Court, Atlanta, GA 30346.

23. Defendant Christian C. Winkle is a successor in interest to and a co conspirator with the original Defendants. Christian C. Winkle is a citizen of the state of Georgia, who had numerous business dealings and contacts in the state of Mississippi. Defendant Winkle was the President and chief Executive officer of Mariner Healthcare, Inc. and Mariner Health Group, Inc. and other Mariner subsidiaries for times material to this lawsuit. In addition, Mr. Winkle conducted business in the state of Mississippi and committed torts in the state of Mississippi. Further, Defendant, Winkle, has engaged in a conspiracy with the other Defendants to try to make the Mariner Defendants judgment proof by helping to strip the real estate and other valuable property assets from the Mariner Defendants and through the artifices of a merger as set forth in detail below, Defendant Winkle has conspired to hide said assets and to personally profit from the theft and succession in interest of the Defendants listed

in paragraphs 11 through 26 herein and their related companies to the Mariner Defendants' assets and liabilities. Defendant Winkle's contacts with the state of Mississippi were and are substantial and continuous such that Mr. Winkle could reasonably expect to be held into a Mississippi court. Mr. Winkle's address is 18570 Birmingham Hwy., Alpharetta, GA.

24. Defendant Harry M. Grunstein is a successor in interest to and a co conspirator with the original named Defendants. Harry M. Grunstein is a citizen of the state of Georgia, who has numerous business dealings and contacts in the state of Mississippi. Defendant Grunstein is the current President and sole shareholder of Mariner Health, Inc., and National Senior Care, Inc., including their nearly 200 subsidiary corporations that do business throughout the United States, including Mississippi. In addition, Mr. Grunstein has conducted business in the state of Mississippi, including incorporating various companies in said state and he has committed torts in the state of Mississippi. Further, Defendant, Grunstein, has engaged in a conspiracy with the other Defendants to try to make the Mariner Defendants judgment proof by helping to strip the real estate and other valuable property assets from the Mariner Defendants and, through the artifices of a merger as set forth in detail below, Defendant Grunstein has conspired to hide said assets and to personally profit from the theft and succession in interest of the Defendants listed in paragraphs 11 through 26 herein and their related companies to the Mariner Defendants' assets and liabilities. Defendant Grunstein's contacts with the state of Mississippi were and are substantial and continuous such that Mr. Grunstein could reasonably expect to be haled into a Mississippi court. Harry Grunstein's address is One Ravinia Drive, Atlanta, GA.

25. Defendant Rubin Schron is a successor in interest to and a co conspirator with the original named Defendants. Rubin Schron is a citizen of the state of New York, who had numerous business dealings and contacts in the state of Mississippi. In addition, Mr. Schron conducted business in the state of Mississippi and has incorporated numerous corporations said state for which he is the sole shareholder and serves as President and chief Executive Officer. Mr. Schron has also committed torts in the state of Mississippi. Further, Defendant, Schron, has engaged in a conspiracy with the other Defendants to try to make the Mariner defendants judgment proof by helping to strip the real estate and other valuable property assets from the Mariner Defendants and, through the artifices of a merger as set forth in detail below, Defendant Schron has conspired to hide said assets and to personally profit from the theft and succession in interest of the Defendants listed in paragraphs 11 through 26 herein and their related companies to Mariner's assets and liabilities. Defendant Schron's contacts with the state of Mississippi are and were substantial and continuous such that Mr. Schron could reasonably expect to be held into a Mississippi court. Mr. Schron's address is for service of process is 45 Broadway 25th Floor, New York, New York 10006.

26. Defendant Michael E. Boxer is a successor in interest to and a co conspirator with the original Defendants. Michael E. Boxer is a citizen of the state of Georgia, who had numerous business dealings and contacts in the state of Mississippi. In addition, Mr. Boxer conducted business in the state of Mississippi, and committed torts in the state of Mississippi. Further, Defendant, Boxer, has engaged in a conspiracy with the other Defendants to try to make the Mariner Defendants judgment proof by helping to strip the real estate and other valuable property assets from the Mariner Defendants and, through the artifices of a merger as set forth in detail below, Defendant Boxer has conspired to hide said assets and to personally profit from the theft and succession in interest of the Defendants listed in paragraphs 11 through 26 herein and their related companies to the Mariner Defendants' assets and liabilities. Mr. Boxer's contacts with the state of Mississippi were substantial and continuous such that Mr. Boxer could reasonably expect to be held into a Mississippi court. Mr. Boxer's address is One Ravinia Drive, Atlanta, GA.

27. Unidentified entities one through ten and John Does one through ten are shareholders of Mariner Health Care, Inc. who Plaintiff is currently unable to identify despite diligent efforts. Said Defendants successors in interest and co-conspirators and are named pursuant to [Miss. R. Civ. P. 9\(h\)](#), and once the identity of the unidentified shareholders is discovered by Plaintiff, Plaintiff will substitute and amend the Complaint to include those entities and/or individuals. The shareholders who were on notice that the transactions described in the paragraphs below were possibly a fraudulent transaction which could be set aside by a court of law and the proceeds to said Defendant shareholders from such a fraudulent transaction be ordered disgorged, did deliberately exchange their shares of the Mariner defendants for \$30 dollars per share which represented a premium over what the shares were actually worth at the time. Defendant shareholders, by exchanging said shares with notice of the potentially fraudulent nature of the merger/acquisition of Mariner with National Senior Care, did knowingly and deliberately facilitate the fraudulent merger/acquisition as set out below and did thereby accept fraudulently transferred proceeds from property in many states,

including property located in Mississippi, that is, proceeds from the Mariner operated Mississippi nursing homes, including Indianola Health and Rehabilitation. By ratifying and approving the fraudulent merger/acquisition, Defendant shareholders did engage in a pattern and practice of doing business in Mississippi and committed torts in said state, and Defendant shareholder' contacts with Mississippi were systematic and continuous such that Defendant shareholders could reasonably expect to be haled into a Mississippi Court.

28. Defendants John Does 11 through 20 are individuals whom Plaintiff is currently unable to identify despite diligent efforts. Said Defendants are named pursuant to [Miss. R. Civ. P. 9\(h\)](#), insofar as their acts and/or omissions were negligent and/or otherwise tortious with respect to the care and treatment of, or in the staffing, supervision, administration and direction of the care and treatment of, Archie Ashford during his residency at Indianola Health & Rehabilitation Center. Alternatively, Defendants are liable for the negligent and/or otherwise tortious acts and/or omissions of others with respect to the care and treatment of Archie Ashford during his residency at Indianola Health & Rehabilitation Center. Said Defendants are also responsible for conspiring to make the Mariner Defendants judgment proof from creditors and in stripping the assets from the Mariner Defendants.

29. Defendants Unidentified Entities 11 through 20 are entities that Plaintiff is currently unable to identify despite diligent efforts. Defendants are named pursuant to [Miss. R. Civ. P. 9\(h\)](#), insofar as their acts and/or omissions were negligent and/or otherwise tortious with respect to the care and treatment of Archie Ashford during his residency at Indianola Health & Rehabilitation Center. Alternatively, Defendants are liable for the negligent and/or otherwise tortious acts and/or omissions of others with respect to the care and treatment of Archie Ashford during his residency at Indianola Health & Rehabilitation Center. Said Defendants are also responsible for conspiring to make the Mariner Defendants judgment proof from creditors and in stripping the assets from the Mariner Defendants.

30. At all times material hereto, Defendants owned, operated and/or controlled Indianola Health & Rehabilitation Center. The actions of each of Indianola Health & Rehabilitation Center's servants, agents and employees as set forth herein, are imputed to all named Defendants, their agents, employees, and affiliates.

31. Jurisdiction is proper in the Circuit Court of Leflore County in that the amount in controversy, exclusive of interest and costs, exceeds the minimum jurisdictional limits of this Court.

FACTUAL SUMMARY

A. Defendants' Scheme to Strip Assets from Indianola Health & Rehabilitation Center in Order to Shield Themselves for Liability for Knowingly, Wantonly, and Recklessly Failing to Provide Proper Care to Nursing Home Residents and in order to Unjustly Enrich Themselves at the Expense of Nursing Home Residents

i. Background

29. In the late 1990s, Mariner Health Care, Inc. and its subsidiaries a/k/a Mariner Post Acute Care Network were companies owning, operating, and/or managing one of the largest nursing home chains in the United States. The Mariner Defendants had acquired various nursing homes through a series of mergers and acquisitions in a drive to become one of the largest nursing home operators in the country.

30. During the series of mergers and acquisitions, the Mariner Defendants added no new value to the nursing homes acquired. Instead, upon acquiring each series of nursing home, massive debt was incurred and placed upon these nursing homes. As a result, in order to meet its mounting debt load, the Mariner Defendants engaged in a common pattern practice and conspiracy with other Defendants of deliberately cutting resident care at the facilities owned, including Indianola Health & Rehabilitation Center. The Mariner Defendants did this by cutting staff, by deliberately understaffing the nursing home, by cutting supplies to

residents, by cutting medical equipment available to residents, etc. Consequently, the care at the Mariner Defendants' nursing home facilities including Indianola Health & Rehabilitation Center suffered tremendously.

31. During 1998, Medicare changed the way in which it paid nursing homes for residents' care. As a result of this significant change in the payment system under Medicare, nursing homes such as those owned and operated by the Mariner Defendants experienced significant short falls in anticipated revenue. Due to these shortfalls, these nursing homes could no longer manage the extensive debt load with which they had been saddled through these numerous mergers and acquisitions. The Mariner Defendants realized by the beginning of 1999 that they would not be able to maintain their debt load. Mariner then began a process of preparing to go into Chapter 11 Bankruptcy.

32. Mariner filed Chapter 11 Bankruptcy on January 18, 2000. During the next couple of years, Mariner operated under the protection of the Bankruptcy laws.

33. The Mariner Defendants emerged from Bankruptcy on May 13, 2002. As a result of their bankruptcy, the Mariner Defendants were able to discharge Mariner and its related companies of nearly \$2 billion in debt.

ii. The Scheme to Maximize Profits at the Expense of Nursing Home Residents and the Conspiracy to Strip and Hide Assets of Mariner

34. After the bankruptcy the Mariner Defendants and their related companies returned to their old and improper ways of seeking to maximize their operating profits of their various nursing homes and hospital facilities throughout the United States. Unfortunately, the Mariner Defendants and their related companies took numerous shortcuts with resident care and cut staffing in order to become as profitable as fast as possible. As a result, numerous residents suffered injuries in the Mariner Defendants' nursing homes including Archie Ash ford in (Indianola Health & Rehabilitation Center).

35. Beginning in late 2003 and into early 2004, the Mariner Defendants and their officers and directors, including, Defendants Winkle, Boxer, Gentry, and Miele determined to engage upon a course of conduct to illegally strip the Mariner Defendants of the majority of assets which would be subject to judgments from numerous plaintiffs and injured nursing home residents. All Defendants to this lawsuit began a course, pattern, and practice of conduct designed to divert and hide the assets of the Mariner Defendants, and thereby determined that the Mariner Defendants would “dump” their remaining debt, cut further costs, and maximize their profits. In furtherance of such plans, all Defendants engaged in a conspiracy to strip assets from the Mariner Defendants in order to avoid the consequences of Defendants' deliberate and reckless harm to nursing home residents.

36. The Mariner Defendants then engaged in a course of conduct and dealing in which they cut costs even further at the nursing homes. At the time these cost cutting measures were put into effect, the Mariner Defendants and all relevant Defendants, knew that these cost cutting measures would greatly compromise the care that the nursing home residents were receiving and would result in nursing home residents receiving care that was below the standards mandated by state and federal law. These Defendants approved and acquiesced to this scheme and course of common conduct and dealing in order to maximize the profits of Mariner and to strip it of assets from which to satisfy liability to harmed nursing home residents.

37. Nursing homes including Indianola Health & Rehabilitation Center, were routinely and deliberately understaffed, and the staff that was available constantly found that they were extremely short of supplies, including basic supplies needed to provide for care of the residents. Despite complaints from numerous staff to the Mariner Defendants' management and the knowledge of Mariner and its officers and directors of the cost cutting measures and the harm it was having on nursing home residents, Mariner and its officers and directors persisted in their course of conduct to maximize the profits and value of Mariner and to enrich their own pockets.

38. During the time frame from Mariner's bankruptcy petition through 2004, certain Mariner Defendant officers and directors, including Defendants Wrinkle, Gentry, Miele, and Boxer received nearly forty five million dollars in compensation, bonuses,

and kickbacks, which in no way reflected upon the actual amount of work they were performing or the value they were providing to the Mariner Defendants' companies. This money was obtained through excessive cost cutting measures, which harmed residents, including Archie Ashford.

39. In mid 2004, all Defendants decided to merge the Mariner Defendants into the Sava Senior Services/National Senior Care group of companies through a series of convoluted actions in which Defendant NCARE Acquisition Corp. was created to effect the merger. Defendant Mariner Healthcare, Inc. and its related companies and Defendant National Senior Care, Inc. were merged into NCARE with Mariner Health Care, Inc. becoming the purported sole survivor from this merger. In turn, Mariner Health Care, Inc. dumped much of its property, and various Sava Senior Care entities, including Defendant SMV Property Holdings LLC, and its related companies gained ownership over this property. The purported "sale price" for Mariner was in excess of 1.05 billion dollars.

40. As part of this conspiracy, Defendants Winkle, Gentry, Boxer, and Miele communicated and conspired with Defendants Schron and Grunstein and/or their agents or representatives in order to develop a fraudulent transaction and scheme that was disguised as a "merger/acquisition".

41. In furtherance of this conspiracy, all Defendants caused to be filed with the United States Securities and Exchange Commission documents which falsely stated the purpose of the "merger/acquisition" of the Mariner Defendants by National Senior Care, Inc. and NCARE Acquisition Corp. These documents failed to disclose the fact that the sole purpose for such merger/acquisition was to defraud and mislead creditors of the Mariner Defendant entities and to enrich the pockets of the individual Defendants. Indeed, in their "Definitive" Proxy Statement filed with the SEC, Defendants falsely stated that there were *no* lawsuits which would materially affect the value of the Mariner Defendants when, in fact, numerous lawsuits were pending against the Mariner Defendants and indeed there were several outstanding judgments, all of which severely impacted the Mariner Defendants' bottom line.

42. In furtherance of this conspiracy and scheme, the Defendants caused the Mariner entities that had emerged from bankruptcy to be merged into a corporation especially created for the occasion, NCARE Acquisition Corp. This corporation was then collapsed, and the remaining corporation was Mariner Health Care, Inc. In turn, National Senior Care, Inc. became the purported 100% owner of the "merged/acquired" Mariner Health Care, Inc. In turn, Defendant National Senior Care, Inc. is 100% owned by Defendant Harry Grunstein who has testified under oath and penalty of perjury that he did not spend a single dollar of his own resources in buying Mariner Health Care, Inc. Indeed, upon deposition questioning of Defendant Grunstein, it becomes perfectly clear that he is simply a schill who is in fact controlled by the puppet master Defendant Rubin Schron who provided the backing and financing for this whole fraudulent transaction.

43. As part of this transaction, the shareholders of the former Mariner Defendant entities, which had emerged from bankruptcy, were paid thirty dollars per share for their stock in the company. This payment was an excessive premium to the actual value of the stock and represented excessive value for the stock at the time of the sale. The premium in the exchange price paid to the Mariner shareholders including was paid in order to induce these Defendant Shareholders into tendering their shares of Mariner stock in order to facilitate the fraudulent merger/acquisition. The Defendant Shareholders sold their shares with knowledge and notice (set forth on pages 36 and 37 of the Definitive Plan of Merger) that the transaction could be considered a fraudulent transfer and set aside by a court of competent jurisdiction.

44. As part of this "merger/acquisition" scheme, simultaneously with the "merger/acquisition" of Mariner Health Group by National Senior Care and NCARE Acquisition Corp., the real assets of the post bankruptcy Mariner Defendants, which included real estate of over 206 nursing home facilities throughout the United States as well as various hospital facilities, was transferred to Defendant Rubin Schron's entities, Defendants SMV Property Holdings LLC, Sava Senior Care, Inc., and/or Sava Senior Care, LLC. After this merger/acquisition, Defendant Mariner Health Care, Inc. and its related affiliates was only left with leases on approximately 70 nursing home facilities; thus, Mariner Health Care, Inc. had the vast majority of its assets stripped from it during the merger/acquisition.

45. Kven more telling of the extent of this fraudulent plan and conspiracy is the fact that under the merger/acquisition agreement, Mariner Health Care, Inc. assumed all the debts and liabilities of the post bankruptcy Mariner Defendants. In addition, it provided indemnification and agreed to provide indemnification insurance to all the officer Defendants of the post bankruptcy Mariner, the same individuals who had planned, schemed and conspired to scheme to strip the assets from the Mariner Defendants. Thus all Defendants managed through the fraudulent merger/acquisition to foist all debts and liabilities off on Mariner Health Care, Inc., which went from owning over 206 nursing homes and other valuable assets from which judgments could have been satisfied to owning only 70 "leases" with unknown companies.

46. The debts and liabilities which Defendants foisted off on Defendant Mariner Health Care, Inc., and the vast assets which have been stripped from Defendant Mariner Health Care, Inc. have left it with assets and capital insufficient for it to continue to operate and insufficient for it to meet its current obligations and liabilities. For instance, in February 2005, just two months after the merger/acquisition, Boyd Gentry, the current Chief Financial Officer and Senior Vice President of Mariner Health Care Inc. testified under oath and penalty of perjury that Mariner had gone from a 1.055 billion dollar entity in December 2004 to an entity that was only worth between 5 and 12 million dollars as of February 2005. This amount is insufficient for Mariner to continue to operate and for it to meet its current and future obligations as they become due. Mariner and its affiliates, through their negligent care and operations of their nursing homes, have been subject to various judgments and settlements in numerous lawsuits. Mariner Health Care Inc. and its affiliates had liability insurance which required Mariner to pay the first one million dollars of any settlement, claim or occurrence. The merger/acquisition transaction has made Mariner Health Care, Inc. and its affiliates unable to meet this requirement.

47. Further, Defendant Mariner Health Care, Inc. and its affiliates are currently unable to pay various judgments and obligations as they become due. Indeed, Plaintiffs counsel's firm has obtained judgments against Mariner Health Care, Inc. and its affiliates which are far in excess of its value of 5 to 12 million dollars. Mariner Health Care, Inc. and its affiliates are also failing to honor various settlement agreements from other lawsuits. In fact, Plaintiffs own counsel's firm had had great difficulty in trying to get Mariner to pay on its settlements, and Mariner has even sent correspondence to Plaintiff's counsel's firm that it cannot pay on certain settlements but would pay interest when it could. (See Exhibit A).

48. Mariner Health Care, Inc. and its affiliates are also failing to honor settlement agreements with other plaintiffs and other plaintiff firms. Indeed, some courts have entered orders compelling Mariner to honor its settlements. (See Sample Order Exhibit B).

49. Also, Defendant Mariner Health Care, Inc. and its affiliates have recently been unable to even pay their own attorneys which has led to the Brunnini law firm of Jackson, Mississippi filing a lawsuit on August 23, 2005, claiming over 1.3 million dollars in unpaid legal fees. (See exhibit C). The Brunnini lawsuit has also alleged that the merger/acquisition was a fraudulent transfer. Certainly Mariner's own attorneys would be in a good position to know about the fraudulent nature and transactions of their former client.

50. During a recent deposition, the president of Mariner Health Care, Inc. and one of the orchestrators of this merger/acquisition, Defendant Harry Grunstein, could not even name the entities from which the post acquisition/merger Mariner Health Care, Inc. was leasing nursing homes. In addition, he could not even begin to estimate the value of the merged/acquired Mariner Health Care, Inc., even though he has stated in deposition that he owns 100% of that entity.

51. Defendant Grunstein's complicity in this scheme becomes even more apparent during telling deposition testimony that he was not being paid to be the president of Mariner Health Care, Inc. and had not even determined what his salary would be at the time. During this deposition, he continued to testify that he had received no compensation as a result of this billion plus dollar transaction.

52. Further, Mr. Grunstein testified under oath that he was not even aware that, as of May 26, 2005, there was a Mariner Health Care internet website which listed over 208 Mariner Health Care facilities throughout the United States, even though he stated under oath that Mariner Health Care only leased 70 facilities. Curiously, immediately after this deposition, this website became “temporarily unavailable”, and as of the date of the filing of this complaint, it is still “temporarily unavailable.”

53. Further, Mariner Defendants' personnel, including a regional vice president of operations, during a deposition taken in a Florida nursing home negligence case involving a purportedly former Mariner facility, testified that Sava Senior Services now owned the facility, but it was nothing more than a name change and the operators were still the same.

54. As part of their reward for engaging in this pattern, practice, and scheme to defraud the creditors of the post bankruptcy Mariner, including nursing home residents throughout the United States, Defendants Winkle, Boxer, Gentry, and Miele received large bonuses and “retention” payments. In all, from 2003 through 2004, these four Defendants received nearly forty five million dollars in compensation.

55. Simultaneously with the “merger/acquisition” of Mariner Health Care, Inc., Defendants Miele and Winkle became officers and directors of Sava Senior Care, LLC, the parent and/or holding company for the real estate of the Mariner Defendants, which had been transferred as part of this fraudulent scheme. These individuals are now working under the control of Rubin Schron and are directly answerable to him. Mr. Winkle has testified that he is currently the president and chief executive officer of Sava Senior Care, LLC, and Mr. Miele has testified that he is currently the general counsel of Sava Senior Care, LLC.

56. Boyd Gentry, who was a licensee of Indianola Health & Rehabilitation Center and was an officer and director in the post bankruptcy Mariner Health Care companies, is now the current chief financial officer of the merged/acquired Mariner Health Care, Inc. and works for Defendant Henry Grunstein.

57. In addition, for the real estate, which was acquired through the fraudulent transaction by Defendants Sava Senior Care, LLC, Sava Senior Care, Inc. and/or SMV Property Holdings LLC, Rubin Schron has caused each of these nursing homes to be separately incorporated as limited liability companies with him as the president and sole officer and director. For instance, he has caused Indianola Health & Rehabilitation Center to be re-incorporated under the name SMV Indianola, LLC and approximately eight other nursing homes in Mississippi to be likewise incorporated under different names.

58. However, for all practical purposes, these organizations are continuing as they did under the former Mariner name with the exception that they now claim to be owned by Sava Senior Care, LLC and/or an SMV entity. Further, as a result of the fraudulent merger/acquisition, Defendants have structured these nursing facilities in a way to make it virtually impossible for a creditor to seek to collect on amounts due and owed. Defendants have also failed to file appropriate ownership change documents with the relevant State agencies.

59. In addition to stripping the assets of the post bankruptcy Mariner Defendant companies, all Defendants have caused the Mariner nursing home facilities, whether owned or leased, to enter into contracts with one of Mr. Schron's companies, Sava Senior Care Administrative Services, LLC. Under this arrangement, funds have been further stripped from these nursing home facilities and funneled into Sava Senior Care Administrative Services, which is ostensibly said to provide “back office” services for these facilities. Thus, the Sava/SMV entities are further stripping millions of dollars each year from these Mariner facilities in an attempt to evade the lawful creditors of said entities.

60. As a result of the scheme and pattern of fraudulent activities described above, these Defendants have now chosen to let insurance lapse on the various nursing home facilities in the hopes that this may scare away victims of the negligence of the said Defendants even though, these nursing homes, including Indianola Health & Rehabilitation are operating even more profitably than ever before.

61. The foregoing transactions described above constitute an improper civil conspiracy whereby the Defendants have engaged in fraud, improper asset transfers and other illegal conduct to further their goal which is the goal of stripping and hiding assets to avoid their lawful debts to creditors and harmed nursing home residents, including the Plaintiff in this case.

62. Each Defendant in this conspiracy is responsible for the actions of all other Defendants in that each Defendant became a willing participant in said conspiracy and has been unjustly enriched by the unlawful actions taken in furtherance of said conspiracy.

63. The merger/acquisition described in this Amended Complaint constitutes a fraudulent transfer of the assets of the post bankruptcy Mariner Defendants in an unlawful attempt to shield the assets from lawsuits and creditors. As such, Defendants are liable for the return of said assets and for the disgorgement of all monies and profits obtained from said assets.

64. Further, all these Defendants as a result of the merger/acquisition scheme, including Defendants: Mariner Health Care, Inc., Sava Senior Care, Inc.; Sava Senior Care, LLC; SMV Property Holdings LLC; Master Holdings, Inc.; Sava Senior Care Administrative Services, Inc.; NCARE Acquisition Corp.; National Senior Care, Inc.; Harry Grunstein; Rubin Schron; Boyd Gentry; Christian Wrinkle; Michael Boxer, and Stefano Miele are further liable to the Plaintiff because they are the successors in interest to the former Mariner Defendants who existed prior to the fraudulent merger/acquisition transactions described herein.

65. All Defendants are further liable to the Plaintiff under a theory of joint enterprise liability in that each of these Defendants did equally and willfully engage in said acts and conspiracies for their own benefit. Further, each of these Defendants did profit from such unlawful conduct and have been unjustly enriched thereby.

66. Further these Defendants are liable to Plaintiff in that these Defendants have assumed fiduciary duties because of their control, management, operation, and domination of the Indianola Health & Rehabilitation Center nursing home facility and have assumed fiduciary obligations to the residents whose very lives depend upon the appropriate care being provided. As a result of their breaches in these fiduciary duties as set forth more fully in this Amended Complaint, these Defendants are liable to Plaintiff under the theory of constructive trust; that is a constructive trust should be placed upon the property and profits of all Defendants involved in any manner with Indianola Health & Rehabilitation Center which has been improperly transferred in the merger/acquisition scheme and which caused harm and injury to Plaintiff.

67. Defendants have also perpetuated a fraud and furthered that fraudulent transfer and conspiracy to defraud creditors by failing to update changes of ownership with the State of Mississippi as evidenced by a letter from the Mississippi Department of Health to Plaintiff's counsel's firm dated June 20, 2005 (See Exhibit "D").

FACTUAL SUMMARY OF MR. ASHFORD'S RESIDENCY

68. On or about April 11, 2003, Archie Ashford was admitted to Indianola Health & Rehabilitation Center where he remains a resident.

69. Mr. Ashford suffers from mental retardation and Parkinson's disease rendering him unable to care for himself or distinguish when poor care is being given to him. He does not have the conscious awareness necessary to be able to fully comprehend all of the elements necessary to know that he has been the victim of nursing home negligence and resident right's violations and he has not been able to understand that he has legal claims against these Defendants, thus tolling all statutes of limitations. Therefore, he is at the mercy of Defendants.

70. Defendants were aware of Archie Ashford's medical condition and the care that he required when they represented that they could adequately care for her needs.

71. At all relevant times, Defendants held themselves out as being:

- a. Skilled in the performance of nursing, rehabilitative and other medical support services;
- b. Properly staffed, supervised, and equipped to meet the total needs of their nursing home residents;
- c. Able to specifically meet the total nursing home, medical, and physical therapy needs of Archie Ashford and other residents like him; and,
- d. Licensed and complying on a continual basis with all rules, regulations, and standards established for nursing homes, nursing home licensees and nursing home administrators.

72. Defendants failed to discharge their obligations of care to Archie Ashford. As a consequence thereof, Mr. Ashford suffered catastrophic injuries, extreme pain and suffering, and mental anguish. The scope and severity of the recurrent wrongs inflicted upon Archie Ashford while under the care of the facility accelerated the deterioration of his health and physical condition beyond that caused by the normal aging process and resulted in physical and emotional trauma, which includes, but is not limited to:

- a. Malnutrition;
- b. Dehydration;
- c. Microaspiration;
- d. Pneumonia;
- e. Poor hygiene;
- f. Decubitis ulcers;
- g. UTIs;
- h. Superficial wounds;
- i. Rashes;
- j. Staph Infections including MRSA;
- k. Various Infections including Pseudomonas
- l. Fecal Impaction;
- m. Blisters;
- n. New onset diabetes;
- o. Hypokalemia;
- p. Pre and post renal azotemia;
- q. Incontinent burns;

- r. Weight loss;
- s. Edema;
- t. Respiratory Distress;
- u. Osteomyelitis;
- v. Flexion Contractures; and
- w. Disfigurement

72. All of the above identified injuries, as well as the conduct specified below, caused Archie Ashford to lose his personal dignity, unnecessary pain, degradation, anguish, and emotional trauma.

73. The wrongs complained of herein were of a continuing nature, and occurred throughout Archie Ashford's stay at Defendants' facility.

75. Plaintiff alleges that on all of the occasions complained of herein, Archie Ashford was under the care, supervision, and treatment of the agents and/or employees of Defendants and that the injuries complained of herein were proximately caused by the acts and omissions of Defendants named herein.

76. Defendants had vicarious liability for the acts and omissions of all persons or entities under Defendants' control, either directly or indirectly, including their employees, agents, consultants, and independent contractors, whether in-house or outside entities, individuals, agencies, or pools causing or contributing to the injuries of Archie Ashford.

77. Defendants have joint and several liability for the actions complained of herein because they consciously and deliberately pursued a common plan or design to commit the tortious acts described in this Complaint and these Defendants actively took part in such actions.

78. All of the above listed injuries constitute separate injuries and causes of action under Mississippi Law and permit separate recoveries under any purported statutory limitations on the amount of recovery. Moreover, Plaintiff contends that any law purported to limit a nursing home resident's ability to recover for individual injuries and/or which lumps numerous injuries and causes of action into a single capped recovery is unconstitutional under the Constitution of the United States and the Mississippi Constitution.

COUNT ONE: NEGLIGENCE AGAINST DEFENDANTS MARINER HEALTH CARE. MARINER HEALTH CARE MANAGEMENT COMPANY, MARINER HEALTH CENTRAL. MHC MID AMERICA HOLDING COMPANY. MHC HOLDING COMPANY. NATIONAL HERITAGE. SAVA SENIOR CARE. LLC; SAVA SENIOR CARE, INC.; SAVA SENIOR CARE ADMINISTRATIVE SERVICES. LLC; SAVA SENIOR CARE MANAGEMENT, LLC; NCARE ACQUISITION CORP.; NATIONAL SENIOR CARE, INC.; SMV PROPERTY HOLDINGS LLC; SMV INDIANOLA LLC; MASTER HOLDINGS, INC.; MID-SOUTH ASSOCIATES; MICHAEL BOXER; STEFANO MIELE; BOYD GENTRY; CHRISTIAN C. WINKLE; HARRY GRUNSTEIN; RUBIN SCHRON AND UNIDENTIFIED ENTITIES 1 THROUGH 10

79. Plaintiff re-alleges and incorporates the allegations in paragraphs 1-78 as if set forth herein.

80. Defendants owed a duty to residents, including Archie Ashford, to provide adequate and appropriate custodial care and supervision, which a reasonably careful person would provide under similar circumstances.

81. Defendants owed a duty to residents, including Archie Ashford, to exercise reasonable care in providing care and services in a safe and beneficial manner.

82. Defendants breached this duty by failing to deliver care and services that a reasonably careful person would have provided under similar circumstances and by failing to prevent the mistreatment, **abuse** and neglect of Archie Ashford.

83. The negligence of Defendants includes, but is not limited to, the following acts and omissions:

a. The failure to provide Archie Ashford with adequate and appropriate hygiene care, including the failure to bathe her daily after each incontinent episode so as to prevent urine and fecal contact with his skin for an extended period of time;

b. The failure to adequately feed Archie Ashford to prevent malnutrition;

c. The failure to provide sufficient amounts of water to Archie Ashford to prevent recurrent and continual dehydration throughout her residency;

d. The failure to provide the minimum number of staff necessary to assist the residents, including Archie Ashford, with their needs;

e. The failure to provide adequate supervision for Archie Ashford to protect him from unexplained injury within the facility;

f. The failure to maintain appropriate records, including the obvious failure to monitor and document significant changes in Archie Ashford's condition;

g. The failure to provide sufficient numbers of qualified nursing personnel to meet the total needs of Archie Ashford;

h. The failure to increase the number of nursing personnel to ensure that Archie Ashford:

1. Received timely and accurate care assessments;

2. Received prescribed treatment, medication, and diet;

3. Received necessary supervision; and

4. Received timely nursing and medical intervention due to a significant change in condition;

i. The failure to provide nursing personnel sufficient in number to ensure that Archie Ashford attained and maintained his highest practicable level of physical, mental and psychosocial well-being;

j. The failure to provide adequate supervision to the nursing staff so as to ensure that Archie Ashford received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments and medications, and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Archie Ashford;

k. The failure to adequately assess, evaluate, and supervise nursing personnel so as to ensure that Archie Ashford received appropriate nursing care, in accordance with Defendants' policies and procedures, and the statutorily mandated regulations implemented by the Mississippi Department of Health and its agents, including the Office of Licensing and Certification;

- l. The failure to provide a nursing staff that was properly staffed, qualified, and trained;
- m. The failure to adopt adequate guidelines; policies and procedures for documenting; maintaining files; investigating and responding to any complaint regarding the quality of resident care or misconduct by employees - irrespective of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person
- n. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;
- o. The failure to provide care, treatment, and medication in accordance with physician's orders;
- p. The failure to provide a safe environment;
- q. The failure to maintain medical records on Archie Ashford in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized with respect to:
 1. The diagnosis of Archie Ashford;
 2. The treatment of Archie Ashford; and
 3. The assessment and establishment of appropriate care plans of care and treatment; and
- r. The failure to protect Archie Ashford from harm within the facility.

84. A reasonably careful nursing home operating under similar circumstances would foresee that the failure to provide the ordinary care listed above would result in devastating injuries to Archie Ashford.

85. As a direct and proximate result of the negligence of Defendants as set out above, Archie Ashford suffered injuries, as set forth herein all of which required hospitalization and medical treatment, and all of which required Mr. Ashford to incur significant hospital and medical expenses.

86. WHEREFORE, based on such conduct of Defendants as set forth above, Plaintiff asserts a claim for judgment for compensatory and punitive damages against Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, humiliation, and disfigurement in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

COUNT TWO: NEGLIGENCE CLAIM AGAINST DEFENDANT GENTRY

87. Plaintiff hereby re-alleges and incorporates the allegations in paragraphs 1-78 as if tally set forth herein.

88. Defendant Gentry was the licensee of Indianola Health & Rehabilitation Center during the residency of Archie Ashford. By becoming licensee, Defendant willingly and voluntarily assumed the ultimate responsibility to operate Indianola Health & Rehabilitation Center in a manner that would ensure that each resident, including Archie Ashford, met his highest practicable physical, mental and psychosocial well-being.

89. As licensee of Indianola Health & Rehabilitation Center, Defendant was responsible to ensure that the operation of the facility was in compliance with state and federal statutes and regulations.

90. As licensee of Indianola Health & Rehabilitation Center, Defendant had a non delegable duty to ensure that the residents of Indianola Health & Rehabilitation Center including Archie Ashford, received adequate and appropriate care that a reasonable person would provide under similar circumstances.

91. As licensee of Indianola Health & Rehabilitation Center, Defendant was required to be aware of matters occurring at the nursing home and to take affirmative steps to correct problems, particularly when those problems could reasonably cause or contribute to an injury to a resident of the facility.

92. As licensee of Indianola Health & Rehabilitation Center, Defendant is vicariously liable for the acts and omissions of all persons or entities under their control.

93. Defendant failed to supervise Indianola Health & Rehabilitation Center in the manner in which a reasonably prudent person similarly situated would and failed to take steps to ensure that the residents of Indianola Health & Rehabilitation Center, including Mr. Ashford, were receiving adequate and appropriate care. The negligence of Defendant includes, but is not limited to the following acts and omissions:

a. The failure to timely and adequately review records related to the operation of Indianola Health & Rehabilitation Center in order to ensure that the residents, including Archie Ashford, received adequate and appropriate care.

b. The failure to ensure that the facility had sufficient numbers of qualified nursing personnel. Such failures resulted in injuries to Archie Ashford, and include but are not limited to the following:

1. The failure to give Archie Ashford a sufficient amount of water to prevent dehydration;
2. The failure to adequately feed Archie Ashford to prevent malnutrition;
3. The failure to provide Archie Ashford with necessary and adequate continence care and assistance with toileting;
4. The failure to provide clean bed linens to Archie Ashford as needed to prevent urine and fecal contact for an extended period of time;
5. The failure to provide the minimum number of staff necessary to assist the residents with their needs;
6. The failure to maintain appropriate records, including the failure to monitor and document significant changes in Archie Ashford's condition;
7. The failure to protect Archie Ashford from receiving unexplained injuries;
8. The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (nursing personnel) to meet the total needs of Archie Ashford;
9. The failure to increase the number of personnel to ensure that Archie Ashford:
 - I. Received timely and accurate care assessments;
 - II. Received prescribed treatment, medication, and diet;
 - III. Received necessary supervision; and
 - IV. Received timely intervention due to a significant change in condition;

10. The failure to provide nursing personnel sufficient in number to ensure that Archie Ashford attained and maintained her highest level of physical, mental and psychosocial well-being;

11. The failure to provide adequate supervision to the nursing staff so as to ensure that Archie Ashford received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments and medications, and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Mr. Ashford;

12. The failure to adequately assess, evaluate and supervise nursing personnel so as to ensure that Archie Ashford received appropriate nursing care, in accordance with Defendants' policy and procedures manual, and the statutorily mandated regulations implemented by the Mississippi Department of Health and its agents, including the Division of Health Facilities Licensure and Certification;

13. The failure to provide a nursing staff that was properly staffed, qualified, and trained;

14. The failure to provide and ensure an adequate nursing care plan based on the needs of Archie Ashford;

15. The failure to provide and ensure adequate nursing care plan revisions and modifications as the needs of Archie Ashford changed;

16. The failure to adopt adequate guidelines; policies and procedures for documenting; maintaining files; investigating and responding to any complaint regarding the quality of resident care or misconduct by employees - irrespective of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person;

17. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;

18. The failure to properly and timely notify Archie Ashford's attending physician of significant changes in Mr. Ashford's physical condition;

19. The failure to provide a safe environment; and

20. The failure to maintain medical records on Archie Ashford in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized with respect to:

I. The diagnosis of Archie Ashford;

II. The treatment of Archie Ashford; and

III. The assessment and establishment of appropriate care plans of care and treatment.

94. A reasonably careful nursing home licensee, operating under similar circumstances, would foresee that the failure to provide the ordinary care listed above would result in devastating injuries to Archie Ashford.

95. As a direct and proximate result of the negligence of Defendant as set forth above, Archie Ashford suffered injuries as set forth herein.

96. WHEREFORE, based on the conduct of Defendant as set forth above, Plaintiff asserts a claim for judgment for compensatory and punitive damages against Defendant including, but not limited to, medical expenses, physical pain and suffering, mental

anguish, disability, humiliation, and disfigurement in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

**COUNT THREE: NEGLIGENCE CLAIM AGAINST DEFENDANTS
WHITTINGTON, SKELTON AND JOHN DOES 10 THROUGH 20**

97. Plaintiff incorporates the allegations in paragraphs 1-78 as if set forth herein.

98. Upon information and belief, Defendants Whittington, Skelton and John Does 10 through 20 were the administrators of Indianola Health & Rehabilitation Center during the residency of Archie Ashford. To the extent the names of the licensed administrators who may have managed this facility during the residency of Mr. Ashford are determined, all of the following acts are properly attributed to them and Plaintiff will seek leave to substitute these individuals as proper party Defendants.

99. As nursing home administrators, Defendants owed a common law duty to act as reasonably prudent nursing home administrators and to prevent all reasonably foreseeable injuries to the residents of Indianola Health & Rehabilitation Center.

100. As nursing home administrators, Defendants owed a common law duty to remain informed as to events occurring at Indianola Health & Rehabilitation Center through contact with the various departments that they managed, including, but not limited to, nursing, dietary, therapy, housekeeping, social services, and maintenance. Defendants were required by law to be aware of matters occurring at the nursing home and to take affirmative steps to correct problems, particularly when those problems could reasonably cause or contribute to an injury, **abuse** or neglect to residents of the home.

101. When Defendants accepted the position of administrator of Indianola Health & Rehabilitation Center they assumed the duties as set forth in the preceding paragraphs.

102. It is reasonably foreseeable that injuries, **abuse** and neglect to residents of Indianola Health & Rehabilitation Center, including Archie Ashford, would occur as a direct result of Separate Defendants' failures to carry out their duties as administrators of the facility.

103. As nursing home administrators, Defendants were centrally involved and actively participated in tortious conduct that directly caused or contributed to the injuries of Archie Ashford. The following areas describe with specificity the wrongdoings of Defendants that resulted in harm to Mr. Ashford:

a. Staffing

1. Nursing home residents, including Archie Ashford, often are unable to care for themselves; thus, they rely on nursing home staff to provide many, if not all, of their activities of daily living (ADL's). Nursing facilities have a common law duty, as well as a statutory duty, to have sufficient nursing staff to provide for the needs of their residents.

2. The administrator is responsible and required to hire and maintain sufficient staff to ensure that these residents' needs are met. Further, the administrator must establish and maintain proper working relationships with physicians, nurse practitioners, and employees of the facility.

3. When the administrator, as here, fails to hire and maintain sufficient staff and fails to maintain proper working relationships between the departments of the facility, the residents do not receive adequate and appropriate care.

4. Additionally, when the administrator fails to hire and maintain sufficient staff, the staff who are present are unable to meet the total needs of the residents through no fault of their own.

5. When the administrator fails to hire and maintain sufficient staff, those who are present must take shortcuts with respect to the care provided and are unable to provide adequate and appropriate care to the residents of the facility.
6. Rather than hiring and maintaining sufficient staff Defendants hired too few registered nurses, too few LPNs, and too few certified nurse assistants. More importantly, too many of these staff members skipped work or terminated their employment because they did not have enough co-workers to properly care for the residents who depended upon them, or because of deplorable working conditions, or because the pay set by the nursing home with the input of the administrator was too low, or such other reasons as will be proven at trial of this matter.
7. Defendants failed to develop and maintain proper working relationships between physicians, nurse practitioners and employees of the facility, and between the various departments they managed. Archie Ashford was injured through their failure to manage these individuals and departments in a way that they could fluidly and seamlessly work together.
8. Due to staff shortages at Indianola Health & Rehabilitation Center Archie Ashford's medical records were not kept and maintained in accordance with accepted professional standards and practices. This incomplete documentation resulted in further injuries to Mr. Ashford - the facility was unable to properly understand her condition, changes that occurred in her condition, and whether or not her care plan and dietary assessments were properly modified to address changes in her condition.
9. Defendants owed a non-delegable duty to Archie Ashford and other residents of Indianola Health & Rehabilitation Center, during their tenure as administrators, to ensure adequate and appropriate custodial care and supervision through their control over staffing issues. A reasonably prudent nursing home administrator would have known or should have known that injuries would occur to residents such as Archie Ashford if staffing levels were not maintained within reasonable parameters.
10. With respect to staffing, the failures of Defendants include but are not limited to:
 - I. Ensuring that the staff provided Archie Ashford adequate hygiene and sanitary care;
 - II. Ensuring that the staff provided Archie Ashford clean bed linens to prevent urine and fecal contact for extended periods of time;
 - III. Providing sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (nursing personnel) to meet the total needs of Archie Ashford throughout her residency;
 - IV. Ensuring that Archie Ashford:
 - a. Received timely and accurate care assessments;
 - b. Received prescribed treatment, medication and diet; and
 - c. Was protected from accidental or intentional injuries by the correct use of ordered and reasonable safety measures and proper supervision of staff and other residents;
 - V. Providing a safe environment free from preventable **abuse** and neglect;
 - VI. Ensuring that Archie Ashford received care, treatment and medication in accordance with physician's orders;
 - VII. Ensuring that Archie Ashford was provided with the dignity and respect that all nursing home residents are entitled to receive;

VIII. Adequately screen, evaluate and check references, test for competence, and use ordinary care in selecting nursing personnel to work at Indianola Health & Rehabilitation Center;

IX. Terminating employees at Indianola Health & Rehabilitation Center assigned to Archie Ashford that were known (or should have been known) to be careless, incompetent and unwilling to comply with the policy and procedures of the facility and the rules and regulations promulgated and adopted by the Mississippi Department of Health;

X. Assigning nursing personnel at Indianola Health & Rehabilitation Center consistent with their education and experience and based on:

- a. Archie Ashford's medical history and condition, nursing and rehabilitative needs;
- b. The characteristics of the resident population residing in the area of the facility where Archie Ashford was a resident; and
- c. Nursing skills needed to provide care to such resident population.

11. Defendants failed to implement adequate guidelines, policies and procedures for:

I. Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at Indianola Health & Rehabilitation Center by the Mississippi Department of Health or any state or federal survey agency;

II. Determining the cause of any such deficiencies, violations or penalties; and

III. Correcting deficiencies or licensure violations or penalties found to exist at Indianola Health & Rehabilitation Center.

12. Adopting adequate guidelines, policies, and procedures for determining whether Indianola Health & Rehabilitation Center had sufficient numbers of nursing personnel to:

- I. Provide 24-hour nursing services;
- II. Meet the needs of residents who reside at the facility, including Archie Ashford; and
- III. Meet the total nursing needs of residents, including their activities of daily living.

13. Defendants failed to adopt adequate guidelines, policies, and procedures of Indianola Health & Rehabilitation Center for documenting; maintaining files; investigating and responding to any complaint regarding the quality of resident care or misconduct by employees at Indianola Health & Rehabilitation Center regardless of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person. This failure resulted in injury, **abuse** and neglect to residents of the facility, including Archie Ashford.

14. Defendants failed to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care at Indianola Health & Rehabilitation Center.

15. Defendants failed to ensure that Archie Ashford attained and maintained her highest level of physical, mental and psychosocial well-being, and the breach of other of their non-delegable duties regarding staffing directly caused damages to Archie Ashford.

b. Budgeting or Allocation of Resources

1. As administrators, Defendants were responsible for providing accurate information regarding the monetary needs of the facility to the owners of the nursing home so that a workable budget could be set.
2. As administrators, Defendants were required to administer Indianola Health & Rehabilitation Center in a manner that enabled it to use resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident.
3. As administrators, Defendants were responsible for allocating funds within the budget provided them by the owners of the nursing home in a manner that ensured that the needs of the residents, including Archie Ashford, were met.
4. Defendants failed to properly report the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for the proper care of its residents, resulting in the following:

I. Staffing levels that were insufficient to attain or maintain the highest practicable physical, mental and psychosocial well-being of each residents, including Archie Ashford, and

II. Shortages of supplies and food necessary to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident, including Archie Ashford.

5. Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Defendants inappropriately allocated or allowed funds to be paid to management companies that did not assist or even participate in managing the care provided to the residents. Rather, Defendants only enhanced the profits of the home, allocated funds to employees whose only duties were non-patient oriented and to items and services that were unnecessary to achieve the proper goal of providing adequate and appropriate care to the residents.

6. The failure to adequately budget and allocate resources to the facility directly caused damages to Archie Ashford.

c. Corporate Compliance and Reporting

1. As administrators of Indianola Health & Rehabilitation Center,
2. Defendants were responsible for ensuring that the facility complied with state and federal standards in providing care to the residents of the home. To that end, they were required to file various reports with regulatory entities.
3. As administrators, Defendants were charged with the responsibility of reporting instances of **abuse** and neglect that occurred at the facility. Upon information and belief, Plaintiff alleges that their failure to properly and timely do so resulted in additional injuries to residents, including Archie Ashford.
4. Upon information and belief, Plaintiff alleges that Defendants failed to properly recognize and report instances of non-compliance occurring at Indianola Health & Rehabilitation Center, and further failed to correct those instances. These failures to report resulted in the appearance of a facility that was properly managed and maintained. This false and misleading appearance induced the family of Archie Ashford to place his in the facility and misled them as to the care he would receive at the facility. Further, upon information and belief, Plaintiff alleges that because certain problems were not reported or were under-reported, the facility escaped inspections and investigations by regulatory agencies and even in-house reviews that might have corrected the deficiencies. These deficiencies that the facility experienced created a more dangerous environment in which additional injuries could occur to residents, including Archie Ashford.
5. Defendants were responsible for ensuring that no claims for reimbursement were submitted to the federal or state governments for services that were not provided or services provided that failed to meet required standards. Upon information and belief,

Defendants submitted false claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility and a breach of Archie Ashford's admissions agreement.

6. The failure to adequately comply with and report violations of state and federal standards directly caused harm to Archie Ashford.

104. A reasonably careful nursing home administrator would have foreseen that the failure to provide the ordinary care listed above would result in devastating injuries to Archie Ashford.

105. WHEREFORE, based on such conduct of Defendants as set forth above, Plaintiff asserts a claim for judgment for compensatory and punitive damages against Defendants including, but not limited to, medical expenses, pain and suffering, mental anguish, disability, humiliation and disfigurement in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

COUNT FOUR: MEDICAL MALPRACTICE AGAINST ALL CORPORATE DEFENDANTS

106. Plaintiff hereby re-alleges and incorporates the allegations in paragraphs 1-78 as if fully set forth herein.

107. All the corporate Defendants owed a duty to residents, including Archie Ashford, to hire, train, and supervise employees so that such employees delivered care and services to residents in a safe and beneficial manner.

108. All the corporate Defendants owed a duty to residents, including Archie Ashford, to render care and services as a reasonably prudent and similarly situated nursing home employee would render, including, but not limited to, rendering care and services in a safe and beneficial manner.

109. All the corporate Defendants owed a duty to assist all residents, including Archie Ashford, in attaining and maintaining the highest level of physical, mental, and psychosocial well-being.

110. All the corporate Defendants failed to meet the standard of care and violated their duty of care to Archie Ashford through mistreatment, **abuse** and neglect. The medical negligence of these Defendants includes, but is not limited to, the following acts and omissions:

- a. The failure to provide adequate supervision for Archie Ashford to protect him from unexplained injury within the facility;
- b. The failure to develop, implement, and update an adequate and appropriate resident care plan to meet the needs of Archie Ashford;
- c. The failure to maintain appropriate records, including the obvious failure to monitor and document significant changes in Archie Ashford's condition;
- d. The failure to provide and ensure adequate nursing care plan revisions and modifications as the needs of Archie Ashford changed;
- e. The failure to implement and ensure that an adequate nursing care plan for Archie Ashford was followed by nursing personnel;
- f. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;
- g. The failure to provide Archie Ashford with adequate and appropriate observation and examination following an injury so as to timely and adequately provide appropriate emergency medical care;

- h. The failure to provide care, treatment, and medication in accordance with physician's orders;
- i. The failure to properly and timely notify Archie Ashford attending physician of significant changes in her physical condition;
- j. The failure to maintain medical records on Archie Ashford in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized with respect to:
 - 1. The diagnosis of Archie Ashford;
 - 2. The treatment of Archie Ashford; and
 - 3. The assessment and establishment of appropriate care plans of care and treatment.
- k. The failure to adequately and appropriately monitor Archie Ashford and recognize significant changes in his health status; and
 - 1. The failure to respond to significant signs and symptoms of change in the condition of Archie Ashford.

111. A reasonably prudent nursing home operating under the same or similar conditions, would not have failed to provide the care listed in the above paragraph. Each of the foregoing acts of medical negligence on the part of the corporate Defendants was a proximate cause of Archie Ashford's injuries. Archie Ashford's injuries were foreseeable to these Defendants.

112. All the corporate Defendants' conduct in breaching the duties owed to Archie Ashford was grossly negligent, willful, wanton, malicious and reckless.

113. As a direct and proximate result of such grossly negligent, willful, wanton, reckless and malicious conduct, Archie Ashford suffered injuries and also suffered extreme pain, suffering, and mental anguish, all of which required medical treatment. As a result, Mr. Ashford incurred significant medical expenses.

114. WHEREFORE, based on the conduct set forth above of all the corporate Defendants, Plaintiff asserts a claim for judgment for compensatory and punitive damages against these Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, humiliation and disfigurement in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

COUNT FIVE; MALICE, AND/OR GROSS NEGLIGENCE WHICH EVIDENCES A WILLFUL, WANTON, OR RECKLESS DISREGARD FOR THE SAFETY OF ARCHIE ASHFORD AGAINST ALL DEFENDANTS

115. Plaintiff re-alleges and incorporates the allegations in paragraphs 1-114 as if fully set forth herein.

116. The longevity, scope and severity of Defendants' failures and actions constitute malice, and/or gross negligence that evidences a willful, wanton or reckless disregard for the safety of others, including Archie Ashford. Specifically, such conduct was undertaken by Defendants without regard to the health and safety consequences to those residents, such as Archie Ashford, entrusted to their care. Moreover, such conduct evidences little regard for their duties of care, good faith, and fidelity owed to Mr. Ashford.

117. The malice, and/or gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, including Archie Ashford, includes, but is not limited to, acts and omissions as alleged in the paragraphs of this Complaint.

118. As a direct and proximate result of the above cited malice, and/or gross negligence that evidences a willful, wanton or reckless disregard for the safety of others, including Archie Ashford, he suffered injuries as set forth herein, all of which required Mr. Ashford to incur significant medical expenses.

119. WHEREFORE, based on such conduct of Defendants, Plaintiff asserts a claim for judgment for compensatory and punitive damages against all Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, and humiliation, and disfigurement in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

COUNT SIX: FRAUD AGAINST ALL DEFENDANTS

120. Plaintiff re-alleges and incorporates the allegations in paragraph 1-114 as if fully set forth herein.

121. Defendants intentionally engaged in common law fraud, which was a proximate cause of the injuries and damages described herein. Defendants, while claiming or implying special knowledge, concealed and/or misrepresented material facts to Archie Ashford and his family beginning with his admission on April 11, 2003, and continuing throughout July 11, 2003 at which time Mr. Ashford was hospitalized. Defendants either personally, or through their agents or employees, specifically misrepresented that they could and would provide twenty-four hour a day nursing care and supervision to Archie Ashford during his residency at Indianola Health & Rehabilitation Center.

121. Defendants made these misrepresentations with the knowledge that they would not and/or could not provide twenty-four hour a day nursing care and supervision to Archie Ashford during his residency at Indianola Health & Rehabilitation Center because they were not sufficiently staffed or supplied.

122. The relationship between Defendants and Archie Ashford and his family was one of trust and confidence, thereby imparting upon Defendants a higher duty to affirmatively speak the truth and to disclose adverse facts to Archie Ashford and his family because of Mr. Ashford's age and infirmities and the surrounding circumstances. Defendants' fraudulent conduct includes, but is not limited to, the conduct described above and set forth below.

123. Defendants knowingly concealed or failed to disclose material facts, even though Defendants knew or reasonably should have known, that because of the surrounding circumstances that Archie Ashford and his family were ignorant of these material facts and did not have an equal opportunity to discover the truth. Specifically, Defendants either personally or through their agents or employees misrepresented the material facts either by omission or affirmative statements that they were willing to, and would, provide the proper care, treatment and services to Archie Ashford, even though Defendants knew that they would provide as little care, treatment and services as possible in order to maximize Defendants' profits at the expense of Mr. Ashford.

124. Further, Defendants made the misrepresentations with the intent to induce Archie Ashford and his family to take some action: specifically, to admit and not remove Mr. Ashford from Defendants' facility, by concealing or failing to disclose the material facts that there was an epidemic of resident harm and injury, as well as a practice of utilizing insufficient numbers of nursing aides who were not qualified to render care or services in accordance with the law during Mr. Ashford's residency from April 11, 2003 through the present. As a proximate cause of Defendants' concealment and failure to disclose, these adverse material facts, Archie Ashford suffered injuries as set forth herein.

125. Archie Ashford and his family detrimentally relied on Defendants' misrepresentations.

125. Defendants' material misrepresentations beginning on or about April 11, 2003, and continuing through the present were made with knowledge of their falsity and with the intention that such misrepresentations should be relied upon by Archie Ashford and his family to Mr. Ashford's detriment. As a consequence and proximate cause of the reasonable and detrimental

reliance by Archie Ashford and his family on these misrepresentations of commission and omission, Mr. Ashford and his family suffered injury.

126. As a result of Defendants' misrepresentation, Defendants obtained an agreement with, or on behalf of, Archie Ashford and/or his family, on or about April 11, 2003, wherein Defendants promised to provide basic care for Mr. Ashford. As partial consideration for this promise, Archie Ashford and/or his family agreed to turn over virtually all of his income to these Defendants on a monthly basis. At the time of this agreement, it was known and understood by all parties that Defendants, for good and sufficient consideration, had also entered into agreements with the State of Mississippi and other relevant licensing and regulatory authorities that were designed and intended to be for the benefit and protection of Archie Ashford and others who were similarly situated. By virtue of these agreements and by direct statement beginning on or about April 11, 2003, and continuing through the present, Defendants either personally or through their agents or employees represented to Archie Ashford and his family that the care Defendants would provide for Mr. Ashford would fully comply with the licensing requirements and standards of care specified by the laws and regulations of the State of Mississippi and other relevant licensing and regulatory authorities.

127. At all times relevant to this proceeding, Defendants held themselves out to Plaintiff and the public at large to be a nursing home licensed by the State of Mississippi and certified to provide care to nursing home residents. At all times material to this lawsuit, the aforesaid agreements, obligations and promises, which were a part thereof, were renewed on a monthly basis by virtue of payment made by, or on behalf of, Archie Ashford, to Defendants for care to be rendered for the upcoming month. Defendants were paid each month in advance of care to be provided pursuant to the admission agreement and promises that were a part thereof, including but not limited to the resident's bill of rights.

128. WHEREFORE, based on such conduct of Defendants as set out above, Plaintiff asserts a claim for judgment for compensatory and punitive damages against all Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, humiliation, and disfigurement in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

COUNT SEVEN: BREACH OF FIDUCIARY DUTY AGAINST ALL DEFENDANTS

129. Plaintiff re-alleges and incorporates the allegations in paragraph 1-128 as if fully set forth herein.

130. Because of her mental and physical infirmities, Archie Ashford was particularly dependent upon Defendants, their employees and agents for his daily care and well-being. Because of the nature of this dependency, the representations of Defendants that they could and would provide necessary care and the dominant influence Defendants exhorted over Archie Ashford on a daily basis while he resided at Indianola Health & Rehabilitation Center, Mr. Ashford and his family held in all Defendants a special confidence and trust. Defendants accepted this special confidence and trust by admitting Archie Ashford to their facility and by determining the level of care to be provided to Mr. Ashford.

131. Archie Ashford and his family relied upon Defendants' superior knowledge, skill, and abilities, which they held themselves out to possess. Archie Ashford and his family also relied on the Defendants to provide care for Archie Ashford who, because of his age and infirmities, was not able to care for himself.

132. By virtue of the nature of the services Defendants provided to Archie Ashford, the special relationship that existed between Defendants and Mr. Ashford, the extortion of influence Defendants had over Mr. Ashford, the huge disparity of power and unequal bargaining position existing between Defendants and Mr. Ashford, as well as all of the other surrounding circumstances including but not limited to Archie Ashford's mental and physical infirmities, Defendants occupied a position of trust and confidence toward Mr. Ashford that required among other things fidelity, loyalty, good faith, and fair dealing by the Defendants.

133. By accepting payment for services and care that was not provided to Archie Ashford, and concealing and failing to disclose their **abuse** and neglect of Mr. Ashford, Defendants breached their confidential and fiduciary duties, namely, the duties of good faith and fair dealing, to Mr. Ashford by failing to provide the appropriate level of care and services to which he was entitled.

134. As a proximate cause of the foregoing breaches of duty by Defendants, Archie Ashford suffered injuries as set forth herein.

135. WHEREFORE, based on such conduct of Defendants as set out above, Plaintiff asserts a claim for judgment for compensatory and punitive damages against all Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, humiliation, and disfigurement in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law. Plaintiff also seeks the imposition of a constructive trust on all wrongful profits and proceeds arising out of Defendants' breach of fiduciary duty to Archie Ashford.

COUNT EIGHT; CIVIL CONSPIRACY AGAINST ALL DEFENDANTS

136. Plaintiff restates and reincorporates by reference all allegations contained in paragraphs 1-78 above.

137. All Defendants did engage in an agreement to maximize their profits at the expense of nursing home residents to whom they owed non delegable duties of care and fiduciary duties of good faith and to strip assets of the Mariner Defendants and to hide said assets from prospective creditors of Defendants, including the Plaintiff Archie Ashford.

138. Each Defendant participated in and, in furtherance of the conspiracy set forth in paragraphs 1-78 above, did cause misleading and false statements and representations to be made to the United States Securities and Exchange Commission, state licensing agencies, including the agencies responsible for licensing Indianola Health & Rehabilitation Center, and to the nursing home residents, and the public in general.

139. The misrepresentations concerning the merger/acquisition of Mariner Health Care, Inc. as set forth above were done for the purpose of deceiving and misleading creditors of numerous nursing home facilities, including Plaintiff.

140. The actions of Defendants as set forth in this complaint constitute an unlawful agreement to accomplish an unlawful purpose (i.e., the stripping of assets and fraudulent transfer of assets from whence creditors could be repaid), by unlawful means (i.e., the fraudulent representations of the mechanisms of and reasons for said merger/acquisition, and the unlawful failure to provide for a means of redress to harmed nursing home residents).

141. Such actions as described above constitute an unlawful civil conspiracy under Mississippi law. Further such actions have resulted in personal injury to and in economic detriment to Plaintiff in that he was injured by the profit maximization schemes of Defendants and his ability to fully recover for the wrongs he has suffered is compromised by Defendants hiding and stripping of their assets.

142. WHEREFORE, based on such conduct of Defendants as set out above, Plaintiff asserts a claim for judgment for compensatory and punitive damages against all Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, humiliation, and disfigurement in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law. Plaintiff also seeks the imposition of a constructive trust on all wrongful profits and proceeds arising out of Defendants' breach of fiduciary duty to Archie Ashford.

COUNT NINE: AGAINST ALL DEFENDANTS TO SET ASIDE FRAUDULENT CONVEYANCE

143. Plaintiff realleges and reincorporates the allegations contained in paragraphs 1-78 as if set forth fully herein.

144. The merger/acquisition transaction as set forth above was done with the specific intent by the Defendants to strip the post bankruptcy Mariner entities of the assets and capital out of which they could satisfy their lawful creditors, including Archie Ashford.

145. The merger/acquisition transaction as set forth above was done with the specific intent by Defendants to foist all debts and liabilities of the post bankruptcy Mariner entities off on Mariner Health Care Inc. and to cause the surviving Mariner Health Care, Inc. to be or to become insolvent as a result of said merger/acquisition.

146. The Shareholder John Doe Defendants received amounts far in excess of the actual value of the post bankruptcy Mariner shares they tendered in the merger/acquisition, and were on notice that said transaction could be considered a fraudulent transfer and set aside by a court of competent jurisdiction.

147. All Defendants knew or should have known that the merger/acquisition transaction would leave the surviving corporation, Mariner Health Care, Inc. with insufficient capital and assets to continue in business and with insufficient capital and assets to meet its obligations and liabilities as they were incurred.

148. The merger/acquisition did indeed leave the surviving Defendant Mariner Health Care, Inc. with insufficient capital and assets to continue in business and to meet its obligations and liabilities as they were incurred.

149. The merger/acquisition made the surviving Defendant Mariner Health Care, Inc. insolvent in an unlawful attempt by all Defendants to evade the creditors and litigants in numerous lawsuits, including the instant suit.

150. The merger/acquisition constituted a fraudulent transfer of valuable property and assets to the Shareholder Defendants, the Sava Defendants, Rubin Schron, the SMV Defendants, the National Senior Care Defendants, and to Defendants Boxer, Gentry, Grunstein, Miele, and Wrinkle.

151. WHEREFORE, said transfer should be set aside and these Defendants ordered to disgorge all property and assets they obtained as well as to disgorge all profits and proceeds since derived from the fraudulently transferred property and assets, including Indianola Health & Rehabilitation Center.

PRAYER FOR RELIEF

Pursuant to the Mississippi Rules of Civil Procedure, Plaintiff demands that all issues of fact in this case be tried to a jury.

WHEREFORE, Archie Ashford, by and through Mary James, Next Friend, for the use and benefit of Archie Ashford, and for his causes of action, prays for judgment against all Defendants, as follows:

1. For damages to be determined by the jury, in an amount exceeding the minimum jurisdictional amount of this Court, and adequate to compensate Plaintiff for all the injuries and damage sustained;
2. For all general and special damages caused by the alleged conduct of Defendants;
3. For the costs of litigating this case;
4. For an order requiring Defendants to disgorge fraudulent transferred assets and proceeds of such assets;
5. For punitive damages sufficient to punish Defendants for their egregious conduct and to deter all Defendants from repeating such atrocities; and
6. For all other relief to which Plaintiff is entitled by Mississippi law.

Respectfully submitted,

Archie Ashford, by and through Mary James, Next Friend, for the use and benefit of Archie Ashford

WILKES & McHUGH, P.A.

Mary J. Perry, Mississippi Bar No. 99876, One North Dale Mabry, Suite 800, Tampa, Florida 33609, Phone: 800-255-5070,
Fax: 813-286-8820

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